

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

INTERSECTIONS INC. and	.	Civil Action No. 1:09cv597
NET ENFORCERS, INC.,	.	
	.	
Plaintiffs,	.	
	.	
vs.	.	Alexandria, Virginia
	.	December 17, 2009
JOSEPH C. LOOMIS and	.	10:00 a.m.
JENNI M. LOOMIS,	.	
	.	
Defendants.	.	
	.	
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TRANSCRIPT OF FINAL PRETRIAL CONFERENCE
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS:	MICHELLE J. DICKINSON, ESQ. MELISSA R. ROTH, ESQ. DLA Piper LLP (US) 6225 Smith Avenue Baltimore, MD 21209 and RYAN C. BERRY, ESQ. DLA Piper LLP (US) 1775 Wiehle Avenue, Suite 400 Reston, VA 20190
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FOR THE DEFENDANTS:	THOMAS M. DUNLAP, ESQ. ELLIS BENNETT, ESQ. Dunlap, Grubb & Weaver P.C. 199 Liberty Street, S.W. Leesburg, VA 20175
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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 P R O C E E D I N G S

2 THE CLERK: Civil Action 09-597, Intersections Inc., et
3 al. v. Joseph C. Loomis, et al. Would counsel please note their
4 appearances for the record.

5 MS. DICKINSON: Good morning, Your Honor. Michelle
6 Dickinson, Melissa Roth, and Ryan Berry for the plaintiffs,
7 Intersections and Net Enforcers.

8 THE COURT: Good morning.

9 MR. DUNLAP: Good morning, Your Honor. Tom Dunlap, and
10 Mr. Bennett, Ellis Bennett has stepped into the hallway to look
11 for some exhibit binders. We're here for the defendants, Joseph
12 and Jenni Loomis.

13 THE COURT: All right. Well, this is the final
14 pretrial. I know that you-all have been before Judge Buchanan a
15 great deal on various discovery issues. Have those all been
16 sorted out at this point?

17 MR. DUNLAP: Generally, we think, Your Honor. Of
18 course, you know, things --

19 THE COURT: Why don't you go to the lectern so we have
20 you by the microphone.

21 MR. DUNLAP: Sorry, Your Honor.

22 THE COURT: Yeah.

23 MR. DUNLAP: I think they've generally been sorted out.
24 We've had a good working relationship with each other in terms of
25 calling and trying to figure things out. We're the third counsel

1 in the case.

2 THE COURT: I recognize that.

3 MR. DUNLAP: We were just local counsel, and we've now
4 changed to counsel. So -- but I think they're generally worked
5 out, Your Honor. We're prepared to set a trial date. I don't
6 think there's going to be anything that would stop us from going
7 forward today.

8 THE COURT: Yes, ma'am.

9 MS. DICKINSON: Good morning, Your Honor. I think we're
10 fairly close to having things worked out. We did receive upon the
11 Court's order a document production from opposing counsel Monday
12 night. We determined yesterday evening that the document
13 production was corrupted somehow.

14 THE COURT: Corrupted?

15 MS. DICKINSON: Yes.

16 THE COURT: Is it electronic production?

17 MS. DICKINSON: Yes, ma'am -- or yes, Your Honor. It
18 was two productions. One disk was blank. The other disk, it
19 wasn't -- can you explain to her?

20 The images didn't match up with the load file. I'm
21 speaking Greek right now. I hope you understand. It's a little
22 bit beyond me, the technology.

23 So what we did was we contacted opposing counsel. We
24 spoke with their e-discovery vendor, who actually wasn't
25 responsible for putting together the production, but we put our IT

1 people together last night around 9:30 or so, because we haven't
2 been able to look at the documents yet, and we were able to work a
3 fix, we believe, for the one set of documents that was blank.

4 With respect to the other ones, he's in the process of
5 loading all of this stuff or was doing that last night. We were
6 in the office until one. It wasn't done yet, and we had to come
7 down here.

8 So I can't really represent to Your Honor that
9 everything is done because I haven't seen it yet.

10 THE COURT: Well, what are you looking for in particular
11 within the electronic records? Are these e-mail communications,
12 receipts of information? What are you looking for?

13 MS. DICKINSON: We're looking for -- we expect that it
14 is e-mail communications. With all honesty, I don't have any idea
15 what it is, because -- I'm sorry.

16 THE COURT: Go ahead.

17 MS. DICKINSON: Because we haven't seen them, but what
18 we did ask for were all e-mails, electronic documents, and that's
19 what they were supposed to be pulling.

20 As you've probably seen from the record, we've had great
21 difficulty getting any documents and then much less in a timely
22 manner. I think we first got our first production about -- four
23 weeks ago? I'm sorry, I'm not sure. So we don't have everything,
24 but --

25 THE COURT: What's the time period over which you were

1 seeking these records?

2 MS. DICKINSON: You mean our discovery request?

3 THE COURT: In other words, was it one year's worth of
4 e-mail messages? What was the frame -- what was the time frame
5 for the discovery?

6 MS. DICKINSON: It was 2007 forward.

7 THE COURT: So roughly two-and-a-half, almost three
8 years of data.

9 MS. DICKINSON: Yes, Your Honor.

10 THE COURT: And how big is the defendant?

11 MS. DICKINSON: The defendant? It's individuals.

12 THE COURT: It's individuals.

13 MS. DICKINSON: Right. So it's Joe Loomis was the
14 former founder and owner of the company that we now own, and Jenni
15 Loomis was his -- is his sister and was his bookkeeper. So we
16 have bookkeeping records from her is what we expect and e-mails
17 between the two of them. As you know, we've alleged a conspiracy
18 and fraud in the sale of the company to us, to Intersections.

19 And then we would expect from him financial
20 documentation, e-mails, of course, and we have alleged that he
21 was -- that after he was hired as the CEO of Net Enforcers after
22 we bought the company, that he then went on and when he was
23 supposed to be doing work for us as the CEO, he started his own
24 business and was working on that business instead of ours and was
25 using our employees for his new business as well.

1 So there are a lot of e-mail communications that are
2 important in this case.

3 THE COURT: And what about financial records?

4 MS. DICKINSON: Financial records we would expect to see
5 there as well.

6 THE COURT: Have you gotten those yet?

7 MS. DICKINSON: Well, we've gotten some, but we don't --
8 because we don't know what's in there, we can't really tell you,
9 Your Honor.

10 THE COURT: Well, you can't even download the bank
11 records? Didn't they come from a bank?

12 MS. DICKINSON: No.

13 MR. DUNLAP: I think all the financial -- I think the
14 load files are from --

15 THE COURT: You have to be at the lectern.

16 MR. DUNLAP: Oh, sorry, Your Honor.

17 MS. DICKINSON: Sorry.

18 MR. DUNLAP: I think the financial records mostly are on
19 their side, but the bank records and all of those records have
20 been previously provided.

21 The second production, the production for Monday was 45
22 documents, and I think we've resolved that, but I think the only
23 records -- and correct me if I'm wrong -- I think the only records
24 production issue is the set of e-mails -- the 45 documents that we
25 produced, and we produced them also just without Bates stamps as a

1 backup copy in PDF by e-mail, but the load file for Jenni Loomis's
2 e-mails, and she was the bookkeeper, but I don't believe that the
3 e-mails that we produced contained financial records. They were
4 produced by the accountant earlier in the case prior to the
5 depositions.

6 So I think all the financial records are in both
7 parties' hands. I think we have everything, and we both
8 designated financial records as exhibits today.

9 THE COURT: All right. The issue about discovery is
10 really Judge Buchanan's bailiwick.

11 MS. DICKINSON: Yes.

12 THE COURT: I just -- because she and I have briefly
13 talked about this case, and I understand that there were a lot of
14 issues about potential sanctions that were floating around, and
15 this case came close at one point to being, as I understand it,
16 resolved by -- or at least a recommendation to be resolved as a
17 sanction, so I don't expect that there'll be any further discovery
18 problems, but if there are, you get them right before Judge
19 Buchanan.

20 In any case, are you prepared to exchange your exhibits
21 and witness lists today?

22 MS. DICKINSON: Yes, Your Honor. We have -- we have
23 both, I believe, filed witness lists this morning, and we have
24 provided them with two boxes of exhibits that are numbered, and it
25 looks like --

1 MR. DUNLAP: We have ours right here, Michelle.

2 MS. DICKINSON: They have theirs as well.

3 THE COURT: All right, that's fine. Then we need to go
4 ahead and set this case for trial, and is this case -- this is set
5 as a jury trial; is that correct?

6 MS. DICKINSON: Well, Your Honor, the defendants have
7 requested a jury trial as to all matters or all claims so triable.
8 In the stock purchase agreement, which is the subject of several
9 of the claims, there's a jury waiver provision, so there are
10 certain claims that are appropriately tried before the jury, but
11 others are not.

12 THE COURT: All right. Well, the main thing is if a
13 jury is needed, then that, you know, to some degree affects how we
14 schedule the trial, so --

15 MS. DICKINSON: And certainly in order to expedite
16 things, because I think this is going to be a little bit of a long
17 trial, we would be happy to waive the jury trial as to all claims
18 if the defendants would do so as well, but that's --

19 MR. DUNLAP: Your Honor, our client is seeking a jury
20 trial still --

21 THE COURT: That's fine. Then we'll just go ahead and
22 do --

23 MR. DUNLAP: -- on those claims triable by a jury.

24 THE COURT: All right. And how long does the plaintiff
25 think this case will take for trial if it's not resolved?

1 MS. DICKINSON: Your Honor, in light of the fact that
2 there are claims and then there are counterclaims as well, we
3 would expect -- we have fourteen witnesses. Five -- I'm sorry,
4 sixteen witnesses. Five of those are deposition testimony. So I
5 would expect that we could get the five in in maybe roughly a day
6 and a half or so, and then the other eleven, some of them we might
7 be able to get in in a half-day.

8 THE COURT: Well, who -- which witnesses are by
9 deposition?

10 MS. DICKINSON: The witnesses that are by deposition are
11 David Burns; Barbara Davis; Larry Heimer; Jenni Loomis and Joe
12 Loomis, the defendants; and Ross Volk.

13 THE COURT: Well, don't you anticipate the defendants
14 are going to be here in person?

15 MS. DICKINSON: I do anticipate they'll be here in
16 person. I'm not sure exactly how Your Honor sets up the trial
17 when you have counterclaims, so we designated deposition excerpts
18 so that we could put that in our case-in-chief.

19 THE COURT: I think you should call the witnesses. My
20 experience --

21 MS. DICKINSON: Okay.

22 THE COURT: -- especially with a jury trial is there is
23 absolutely no substitution for the live witness.

24 MS. DICKINSON: Oh.

25 THE COURT: And therefore, you just call them, and if

1 they have to testify twice, they testify twice.

2 What about the other three witnesses? Why are they by
3 deposition?

4 MS. DICKINSON: We don't have jurisdiction over them
5 here, so they're all out of state.

6 THE COURT: Do you have any reason to believe they won't
7 come?

8 MS. DICKINSON: Yes. They've told us they won't come.
9 That would be Ross Volk, Barbara Davis, and Larry Heimer.

10 THE COURT: And have they advised you as to why they
11 won't come?

12 MS. DICKINSON: Larry Heimer, what he has told us is
13 that he -- and I have no reason not to believe this -- he lives in
14 Arizona, he is a CPA, he has small children, and so we actually
15 had to do his deposition remotely because of his time constraints.

16 Barbara Davis has children, lives in Florida, and
17 indicated her unwillingness to show up for a trial, or her
18 displeasure at showing up for trial might be a better way.

19 And then Ross Volk is the -- is a former employee of
20 Novartis, one of the customers that cancelled in this case, which
21 is an issue in this case. We took his deposition with the idea
22 that we would not be calling him at trial. He lives in New
23 Jersey.

24 THE COURT: All right. It's been my experience that --
25 now, are you planning -- are these video depositions, or are

1 they --

2 MS. DICKINSON: Yes, yes.

3 THE COURT: All right. My experience has been video
4 depositions almost never work, and so what you need to be prepared
5 for with the trial, No. 1, is I want those depositions as pared
6 down and tailored as possible --

7 MS. DICKINSON: Okay.

8 THE COURT: -- because the difficulty with a witness
9 who's not physically in the courtroom or being presented by a live
10 video presentation is the Court can't control it, and I have found
11 many times, especially in depositions, where there is no court
12 present to sort of move things along, that the questions are often
13 repetitive, unnecessary, etc., and so what I will require you to
14 do is have transcripts edited to be consistent with how you edited
15 your videos, and if I find that the videos are just way too slow,
16 too long, then we will switch to the old-fashioned method, with my
17 law clerk sitting in the box as the witness, reading the witness's
18 answers, and then counsel who ask the questions, you know,
19 plaintiffs' counsel or defense counsel, reading the respective
20 questions.

21 So it mimics to some degree live testimony, but it goes
22 in faster that way.

23 MS. DICKINSON: Okay.

24 THE COURT: So just be prepared for that. Again, if
25 it's a phenomenally well done deposition and it's moving at the

1 right pace and you've edited it appropriately, then you may get a
2 chance to play it.

3 And you need to contact Mr. Bachman, our court AV
4 person, to talk about how -- what equipment is going to be needed
5 to play those depositions.

6 MS. DICKINSON: Okay. We'll do that. Thank you, Your
7 Honor.

8 THE COURT: All right. But with a jury trial and the
9 plaintiff having 16 witnesses -- I mean, I can't imagine five
10 depositions by video taking a day. That will be deadly for the
11 jury, so you need to think about that very creatively.

12 But in any case, it sounds as though this case will
13 probably take about a week to try. Is that your estimate?

14 MS. DICKINSON: We were actually thinking that ours
15 would take over a week, just our case.

16 THE COURT: How much money is involved in this case?

17 MS. DICKINSON: The amount that exchanged hands was 14
18 million. As you are aware, we've asked for rescission -- our 14
19 million back, they get the company back. There are punitive
20 damages at stake here as well.

21 THE COURT: All right. I'm not sure it would take that
22 much time, but anyway, we'll give you enough time.

23 All right, have you talked between yourselves about a
24 date?

25 MS. DICKINSON: We have not. My calendar is open, Your

1 Honor.

2 THE COURT: All right. We could do this --

3 MR. DUNLAP: And, Judge?

4 THE COURT: Yeah.

5 MR. DUNLAP: I'm sorry to interrupt. I just made a
6 couple of quick notes while Michelle was talking. Our client says
7 that Barbara Davis will appear for live testimony. I don't know,
8 that's what he says, so that might not be an issue. With respect
9 to the others --

10 MS. DICKINSON: Who?

11 MR. DUNLAP: Barbara Davis. That's what he said. I can
12 talk to you about it afterwards. I don't have the details.

13 With respect to our case, Your Honor, we believe that
14 our case, with the witnesses we have, between their witness list
15 and our witness list, it looks like there will be about 20 to 24
16 unique witnesses, depending on who's eventually called, so we
17 believe that our side of the case, with the counterclaims we have
18 pending, would take anywhere from three to four days.

19 The total that we came up with in the hallway together
20 was 13 days. That's a really long time, obviously, but that's
21 kind of what we were thinking generally.

22 THE COURT: Well, you'll be shocked at how fast things
23 move in this court, so I would expect a significant amount of
24 stipulations or at least a hard effort made to stipulate to facts
25 for which there really is no dispute, and we'll move the case

1 expeditiously, but I'll set enough time for this.

2 MR. DUNLAP: And, Judge, also, Michelle just reminded me
3 of this as well, there are five experts, I think -- four experts,
4 there are four experts to testify as well, which will, you know,
5 take a significant amount of time probably.

6 THE COURT: If I let them testify. I mean, I can't
7 imagine four experts needed in one case. This is not a patent
8 case.

9 MR. DUNLAP: It's not, Your Honor, but there are some
10 distinct, discrete issues. There's an electronic e-mail forgery
11 issue. There's a damages issue, of course, and so we each have
12 experts for each of those issues, because they are separate
13 fields.

14 So I don't know that there will be substantial testimony
15 about the electronic issue, but, you know, there are four experts
16 just noticed. That's all, Your Honor.

17 THE COURT: Well, the e-mail tampering issue, how real
18 is that?

19 MS. DICKINSON: That is as real as I am standing before
20 you, Your Honor.

21 THE COURT: I have to tell both sides that if there is
22 any significant issue about tampering with evidence, whichever
23 side is being accused of it, if it's established, you ought to run
24 to the settlement table and resolve the case. I've had several
25 cases where this issue has come up. It's devastating if there's

1 any significant evidence that supports the claim.

2 Haven't you tried one effort to settle this case? Have
3 all the disputes been with --

4 MR. DUNLAP: We have a mediation scheduled for Monday,
5 Your Honor.

6 THE COURT: With Judge Buchanan?

7 MS. DICKINSON: Yes.

8 MR. DUNLAP: Yes, Your Honor.

9 THE COURT: Again, this might be the one issue to really
10 focus on, because as I said, it is a smoking gun of amazing
11 proportion, and I've seen some very smart people get themselves
12 into real trouble because they were too clever and they fudged the
13 documents or they fudged the e-mails and it comes back to haunt.

14 I can't prejudge the issue, I don't know what your
15 evidence is, but if it's there, then wise counsel need to sit down
16 with the client and do damage control.

17 Judge Buchanan, I know, has a great deal of familiarity
18 with this case, so I would expect that both parties will take the
19 settlement conference seriously. I assume the principals will all
20 be present at the conference?

21 MS. DICKINSON: Yes, Your Honor.

22 MR. DUNLAP: Yes, Your Honor.

23 THE COURT: All right. Well, that's good.

24 All right. In any case, if the case does not settle, is
25 there an expectation of dispositive motions, or are there too many

1 factual issues in dispute to make sense to try to file --

2 MS. DICKINSON: Well, Your Honor, you had mentioned the
3 stipulation of facts, and the defendants in this case won't even
4 stipulate to the fact that there was an employment agreement or a
5 stock purchase agreement at this point, so --

6 THE COURT: I'm sorry?

7 MS. DICKINSON: Sorry.

8 THE COURT: Yeah.

9 MS. DICKINSON: They won't even stipulate to the fact
10 that there was an employment agreement or a stock purchase
11 agreement in this case, even though those are the bases for two of
12 their claims against our clients. So, you know, our stipulation
13 of facts is about a page and a half/two pages that we filed this
14 morning, as opposed to what I would expect would be more like ten.

15 THE COURT: All right. Well -- and again, it's been my
16 experience where there are obvious facts and one side is refusing
17 to stipulate to them, that suggests that there's a real problem
18 with that particular side of the case, but I'm not going to get
19 into the merits of that right now.

20 But the answer is you don't at this point anticipate at
21 least from the plaintiffs' side filing dispositive motions?

22 MS. DICKINSON: Not a dispositive motion, Your Honor,
23 just because of that fact, but we do expect to be filing a
24 spoliation motion.

25 THE COURT: All right. Do you want to respond to that

1 at all yet?

2 MR. DUNLAP: Sure. Your Honor, we for our part, and
3 we've been talking to them about this, but we feel there's a
4 spoliation motion on our side as well with respect to their client
5 and a certain e-mail box.

6 Likewise, with respect to the -- I think there's an
7 issue with authenticating the asset purchase agreement. There are
8 counterclaims that were filed by previous counsel and --

9 THE COURT: Weren't there problems with previous counsel
10 in this case?

11 MR. DUNLAP: I believe there were problems with previous
12 counsel.

13 THE COURT: It might suggest -- I'm not saying it's the
14 case -- it might suggest that you as the counsel of record, you're
15 the one who's on the hook --

16 MR. DUNLAP: Absolutely, Your Honor.

17 THE COURT: -- need to review under Rule 11 --

18 MR. DUNLAP: Judge, I'll tell you this up front and we
19 told counsel this today, that we're withdrawing the counterclaims
20 with respect to the asset -- well, we've advised our client to do
21 that with respect to the asset purchase agreement.

22 MS. DICKINSON: Stock.

23 MR. DUNLAP: Stock purchase agreement, I'm sorry, stock
24 purchase agreement. So --

25 THE COURT: What would that leave then in terms of the

1 counterclaim?

2 MR. DUNLAP: There's a wrongful termination claim that's
3 left, Your Honor, so it reduces, I guess, significantly in terms
4 of counterclaim time what we would need, but it's our -- we
5 anticipate that our client will agree to this.

6 We've stepped into a client that I've actually never met
7 yet, because we've only been in the case 30 days, and we were kind
8 of -- I don't know if you read Judge Buchanan's order, but we were
9 kind of put in the position of having to be in the case and
10 originally had just been local counsel, so --

11 THE COURT: Never use that modifier of only local
12 counsel.

13 MR. DUNLAP: I understand. I absolutely understand,
14 Your Honor.

15 THE COURT: All right.

16 MR. DUNLAP: And that's why we're here today before you,
17 Your Honor, and smiling, but we anticipate withdrawing those
18 counterclaims, so --

19 THE COURT: Well, hopefully, your client listens to you,
20 and you listen carefully to particularly Judge Buchanan, who knows
21 this case far better than I. In any case, the spoliation motions
22 ought to be resolved. If you don't settle, those motions ought to
23 get docketed quickly --

24 MS. DICKINSON: Okay.

25 THE COURT: -- because the resolution of those motions

1 again might put the case in a very different posture pretrial, all
2 right, and/or set it up for a different type of settlement
3 approach.

4 MR. DUNLAP: All right.

5 THE COURT: But in any case, you know, perhaps you won't
6 have to get to that point if you can, if you can resolve it.

7 We'll set this case for late February. I have the week
8 of March 1 and March 8 are completely open, so do those work on
9 your calendars? We would start on Monday, March 1.

10 MS. DICKINSON: I'm sorry, Your Honor, I didn't hear the
11 date.

12 THE COURT: Monday, March 1.

13 MS. DICKINSON: Okay.

14 THE COURT: That works well on my calendar because it,
15 the second week is also completely open.

16 MR. DUNLAP: Your Honor, March 8 would be better for us.

17 MS. DICKINSON: Your Honor, either works for us,
18 assuming that you have enough time if you started it March 8. I
19 thought you were saying that you only had --

20 THE COURT: No, no, March 1 is better for the Court,
21 because I know that I have all of the week of March 8 completely
22 open.

23 MS. DICKINSON: That's great with us, Your Honor.

24 MR. DUNLAP: Okay. Your Honor, March 1 will work.

25 THE COURT: All right, that's fine. And that will be at

1 10:00 at this point with a jury.

2 MS. DICKINSON: Your Honor, how does that work in your
3 courtroom, when you have claims that are being tried to the jury
4 as well as claims that are being tried to Your Honor?

5 THE COURT: Well, the only claim then -- if the asset
6 purchase agreement counterclaim issue is out, then the only issue,
7 as I understand it, left in the counterclaim is one of wrongful
8 termination; is that right?

9 MR. DUNLAP: That's correct, Your Honor.

10 THE COURT: And that's the only issue for which a jury
11 trial has been requested.

12 MS. DICKINSON: We have a --

13 MR. DUNLAP: They have a request as well.

14 MS. DICKINSON: We have a breach of employment agreement
15 claim as well that would be -- if their employment claim is going
16 to be tried before the jury, we would want to do that as well,
17 Your Honor, and we also have conversion and tortious interference
18 claims which would be proper to put in that bailiwick in front of
19 the jury.

20 Then it would be the stock purchase agreement claims,
21 the fraud, the securities fraud, and the breach of contract that
22 would go before your Your Honor.

23 THE COURT: Well, there are two ways of doing it. I
24 mean, we're not going to bifurcate the case, because there's going
25 to be too much overlap of evidence. So we would simply try the

1 whole case to the jury basically, and I probably would let the
2 jury do an advisory verdict. That's what a lot of judges do.
3 And, you know, I can decide the case as well, but since we're
4 going to have a jury here, we can just have them hear the whole
5 thing.

6 MS. DICKINSON: Okay.

7 THE COURT: All right?

8 MS. DICKINSON: Thank you, Your Honor.

9 THE COURT: And -- so it won't change anything. In
10 terms of, you know, we'll address the issue about jury
11 instructions and that sort of thing down the road, but it -- so
12 the trial would just go through sort of seamlessly in that
13 respect, all right?

14 MS. DICKINSON: Thank you.

15 THE COURT: All right. So we're set to start this case
16 with a jury on Monday, March 1. Depending upon how the trial is
17 going, you should expect to be here for those trials days until
18 6:00, and probably we'll start them at 9:30 in the morning after
19 the first day.

20 Whether we hold court on Friday, March 5, is going to
21 depend to some degree where I feel we are on the schedule.
22 Frequently, while evidence is being taken, because we have our
23 motions dockets on Friday, we often don't have our jury trials
24 continued on Fridays. Sometimes, though, for scheduling reasons,
25 we do, so you just have to keep your calendars open for Fridays as

1 well, although you could count on not having to be here Friday
2 morning, certainly not Friday morning the 5th.

3 If the jury has the case and they're deliberating, they
4 can deliberate while I'm holding a motions docket, so then you
5 might have to be here on the 12th in the morning. I know that
6 some of you have motions hearings in other courts on Friday
7 mornings here in Virginia especially.

8 So just understand the 5th you can comfortably go
9 someplace in the morning; we might or might not have the trial in
10 the afternoon here; but the 12th you'd better sort of block out,
11 because if the jury is deliberating at that point, you'd have to
12 be here in the morning, all right?

13 Anything further on this case?

14 MR. DUNLAP: There's nothing further from the defendant,
15 Your Honor.

16 MS. DICKINSON: Your Honor, two things, I believe.

17 THE COURT: Yes.

18 MS. DICKINSON: With respect to the spoliation motion,
19 do you want us to just -- do you want to set a deadline, or we'll
20 just file them as soon as possible?

21 THE COURT: I'm here all the Fridays between now and
22 that trial, so just you go ahead and work it out in terms of a
23 date that's good for both of you. I recommend, however, that the
24 earlier that issue gets resolved, it will put the trial in a
25 different context. So don't push it right up against the trial

1 date, all right?

2 MS. DICKINSON: Okay. And my other question, Your
3 Honor, was with respect to jury instructions, do you have -- are
4 there any standard instructions or any format --

5 THE COURT: We use the standard federal, you know,
6 Sand's or the old -- Sand's or O'Malley. I don't know, are there
7 any state law issues in this case? What --

8 MS. DICKINSON: The employment agreement is under state
9 law.

10 THE COURT: Which, the law of which state?

11 MS. DICKINSON: I think it's Delaware.

12 MR. DUNLAP: I think it's Delaware.

13 MS. DICKINSON: I'm so sorry that that has slipped my
14 mind.

15 THE COURT: All right.

16 MS. DICKINSON: Three hours of sleep, I'm tired.

17 THE COURT: Yeah. Just make sure that if there's any
18 issues about which law applies --

19 MS. DICKINSON: Okay.

20 THE COURT: I mean, you know, I wouldn't have Delaware
21 instructions here. I don't know how different, if at all, they
22 are from Virginia instructions, but those issues you need to get
23 resolved, all right?

24 MS. DICKINSON: We will. Thank you very much, Your
25 Honor.

1 THE COURT: All right, very good.

2 MR. DUNLAP: Thank you, Your Honor.

3 (Which were all the proceedings
4 had at this time.)

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6 CERTIFICATE OF THE REPORTER

7 I certify that the foregoing is a correct transcript of the
8 record of proceedings in the above-entitled matter.

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/s/

Anneliese J. Thomson

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